

Short Title: GSC Defaulting Bidders in Judicial Sales.

A BILL TO BE ENTITLED

AN ACT TO CLARIFY **THE EFFECTS OF A DEFAULT BID** IN PRIVATE JUDICIAL  
SALES AND **PUBLIC OR PRIVATE** PARTITION SALES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 1-339.36 reads as rewritten:

**"§ 1-339.36. Private sale; upset bid; subsequent ~~procedure~~; procedure; defaulting bidder.**

(a) Every private sale of real or personal property, except a sale of personal property as provided by G.S. 1-339.34, is subject to an upset bid on the same conditions and in the same manner as is provided by G.S. 1-339.25.

(b) When an upset bid is made for property sold at private sale, subsequent procedure with respect to the upset bid is the same as for upset bids submitted in connection with real property sold at public sale, except that the notice of any resale of personal property held pursuant to an order granted under G.S. 1-339.27A need not be published in a newspaper but shall be posted as provided by G.S. 1-339.17.

(c) Subsections (e) and (f) of G.S. 1-339.30 apply to a defaulting bidder in a private sale."

*[Staff Note: G.S. 1-339.30 provides:*

**"§ 1-339.30. Public sale; failure of bidder to make cash deposit or to comply with bid; resale.**

(a) *If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and the highest bidder fails to make the required deposit, the person holding the sale shall at the same time and place again offer the property for sale.*

(a1) *If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale.*

(b) *When the highest bidder at a public sale of personal property not required to be confirmed fails to make the cash payment, if any, required by the terms of the sale, the person holding the sale shall at the same time and place again offer the property for sale. In the event no other bid is received, a new sale may be advertised in the regular manner provided by this Article for an original sale.*

(c) *When the highest bidder at a public sale of personal property required to be confirmed fails to comply with his bid within 10 days after notice given by the person holding the sale or after a bona fide attempt to give such notice that the sale has been confirmed, the judge*

or clerk having jurisdiction may order a resale. The procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale of personal property.

(d) When the highest bidder at a public sale or resale of real property by auction or any upset bidder fails to comply with the bid within 10 days after the tender to the bidder of a deed for the property or after a bona fide attempt to tender the deed, the judge or clerk having jurisdiction may order a resale. The procedure for a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real property.

(d1) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with the bid within 10 days after the tender to the bidder of a deed for the timber or after a bona fide attempt to tender a timber deed, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale.

(e) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on the bid, and in case a resale is had because of the default, the defaulting bidder remains liable to the extent that the final sale price is less than the bid, and for all costs of the resale or resales. Any deposit or compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for which the defaulting bidder remains liable under this section.

(f) Nothing in this section deprives any person of any other remedy against the defaulting bidder."]

**SECTION 2.** Part 3 of Article 2 of Chapter 46A of the General Statutes is amended

by adding a new section to read:

**"§ 46A-84.5. Petition for revocation based on default bid.**

If a purchaser in a partition sale defaults on the purchaser's bid, any party to the partition proceeding or the officer or person designated to make the sale may at any time petition to revoke an order confirming the partition sale. The petitioner for revocation shall deliver a copy of the petition to all parties required to be served under G.S. 1A-1, Rule 5. If the court finds that the purchaser defaulted on the purchaser's bid, the court shall revoke the order of confirmation and shall order a resale."

[Staff Note: Staff has rewritten this section to add a new G.S. section with the goal of establishing a separate, streamlined procedure for a petition for revocation based on a default bid. Some of the language is modeled after G.S. 46A-83, which provides:

**§ 46A-83. Petition for revocation of confirmation order.**

(a) Grounds for Revocation. – Notwithstanding G.S. 46A-76 or any other provision of law, within 15 days of entry of the order confirming the partition sale of real property, the purchaser or any party to the partition proceeding may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) *In the case of any party to the partition proceeding, any of the following:*

- a. *Notice of the partition was not served on the petitioner for revocation as required by G.S. 1A-1, Rule 4.*
- b. *Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46A-76(d).*
- c. *The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.*

*In no event shall the confirmation order become final during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.*

(b) *Effect of Notice. – A petitioner for revocation shall not prevail under sub-subdivision (a)(2)a. or b. of this section, if the petitioner was mailed notice of the sale in accordance with G.S. 46A-76(d).*

(c) *Service; Notice of Hearing. – The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under G.S. 1A-1, Rule 5, and shall serve the officer or person designated to make the sale under G.S. 1A-1, Rule 4(j). The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make the sale, and all parties required to be served under G.S. 1A-1, Rule 5.*

(d) *Petition by Purchaser. – In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence all of the following, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer:*

- (1) *A lien remains unsatisfied on the property to be conveyed.*
- (2) *The purchaser has not agreed in writing to assume the lien.*
- (3) *The lien will not be satisfied out of the proceeds of the sale.*
- (4) *The existence of the lien was not disclosed in the notice of sale of the property.*

*The order of the court in revoking an order of confirmation under this section shall not be introduced in any other proceeding to establish or deny the existence of a lien.*

(e) *Petition by Party. – In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that the petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.*

(f) *Resale. – If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is as provided under G.S. 46A-76.]*

**SECTION 3.** This act is effective when it becomes law.